

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Leslie S. Marco et al.) Group: 3721
Serial No.: 10/681,524)
Filed: October 8, 2003)
Title: TOP LIFT CARRIER AND METHOD OF) Examiner: Tawfik, Sameh
MANUFACTURE THEREFOR)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the final rejection of claims 1-7 in the above identified application. No amendments are being filed with this request. This Pre-Appeal Brief Request for Review is filed concurrently with a Notice of Appeal from the Examiner's decision in the Final Office Action dated January 12, 2010. The Panel of Examiners is requested to review the legal and factual basis of the rejections of claims 1-7 for the reasons stated below. Claims 8-13 have been allowed.

REJECTION UNDER 35 U.S.C. §112 IS NOT APPROPRIATE

Claims 1-7 have been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The Examiner specifically refers to the limitations in claim 1 of, "forming a container holding portion only in the carrier sheet" and "forming a handle portion only in the handle sheet" as not being described in the specification in a clear way to be understood. The Examiner references the last line of page 3 through the first paragraph on page 4 of the specification, which refers to "forming holes in the first handle portion similarly shaped to the first row of apertures" and "forming holes in the second handle portion similarly shaped to the third row of apertures" and the filed drawings, Figs. 2-4 via holes formed in the handle sheet similarly to the holes formed in the carrier sheet; and concludes that these are contradictory to the claim language that includes a limitation "only" as it seems like a container holding portion and handle portion have been formed similarly/simultaneously in both sheets.

Claim 1 as amended is fully enabled by the description in the specification. The method of making container carriers is described in paragraphs [37] through [42] which includes **positioning the sheets 102, 104 "on each other in overlying manner"** (paragraph [37] line 3); and **"connecting the sheets by welding"** (paragraph [37] line 8). The procedure for forming the apertures of the container holding portion simultaneously with forming the holes of the handle portion is described in paragraph [39], which specifically describes **forming apertures and holes that are "similarly configured...as the cutting equipment shears through overlying sheets 102 and 104."** (See paragraph [39] lines 1-4). Forming the third row of apertures simultaneously with and similarly configured to a second row of holes in the handle portion is similarly described in the same paragraph. One skilled in the art would clearly understand from the written description and drawings how a carrier is made to include a container holding portion only in a carrier sheet and a handle portion only in the handle sheet even though apertures of the container holding portion and holes of the handle portion are similarly configured and simultaneously formed by cutting through overlying portions of the handle sheet and the carrier sheet.

The claims are not contradictory to the description in the specification. The claims recite that the handle portion is formed only in the handle sheet and the container holding portion is formed only in the carrier sheet. The written description describes a process and a carrier formed by the process in which a handle portion is formed only in the handle sheet and a carrier portion is formed only in the carrier sheet even though the apertures and holes of each are simultaneously formed in overlying fashion by cutting equipment shearing through the overlying sheets. Thus, the claims and written description are completely consistent with each other.

Reciting that a handle portion is formed only in a handle sheet, and a carrier portion only in a carrier sheet does not preclude holes in the handle sheet and apertures in the carrier sheet being of similar configuration. The specification describes it, the drawings show it and the claims recite it.
The overall configuration of the carrier can be such that containers are not held by the handle portion even though the holes of the handle portion are similarly shaped to the holes of the container holding portion. For example, and not limitation, the specification describes an embodiment in which handle sheet 102 and carrier sheet 104 are provided from different materials (paragraph [36]), the carrier sheet being sufficiently stretchable to surround and retain containers. The handle sheet may have

different physical properties not suitable for retaining containers. Further, the handle sheet may include outer structure by which the carrier is grasped, which can affect stretching of the holes formed in the handle portion such that the handle portion is not properly suitable for retaining containers.

Accordingly, it is respectfully submitted that the rejection under 35 USC 112 is inappropriate and should be withdrawn.

CITED REFERENCES DO NOT SUPPORT REJECTIONS UNDER 35 U.S.C. §103

Claims 1-7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,868,659 (Slomski) in view of U.S. Patent No. 5,487,465 (Broskow).

The Examiner applies the terms from the pending claims inaccurately to the teachings of the prior art. The Examiner states that Slomski teaches “the holes and the first row of apertures formed in substantially the same configurations, see for example (Fig. 4).” However, in looking at Figs. 3 and 4 of Slomski, no holes in the handle portion 26 of Slomski are shaped in any way similarly to the container receiving apertures of the container engaging portion 24. Applicants respectfully submit that such a structure is clearly not taught by Slomski in which the container receiving apertures are shown to be substantially rectangular openings in the carrier sheet, and the holes in the handle sheet are of two types, both long and narrow, with the outer holes being more or less a flattened L-shape and a central hole being an elongated, thin slit. Clearly the apertures in the carrier sheet and the holes in the handle sheet of Slomski are not “formed in substantially the same configurations” as recited in claim 1. Accordingly, Slomski does not teach what the Examiner states is taught by Slomski, and therefore the rejections based thereon are not properly supported.

The Examiner states that the Broskow process teaches “cutting through overlying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlying arrangement, see for example (Fig. 5; via stamping die 64 cutting through overlying portions of the handle sheet/portion and the carrier sheet/portion to form holes of container receiving apertures and holes in the handle portion).”

Broskow does not teach what the Examiner says it teaches. Broskow does not teach a separate handle sheet and a separate carrier sheet. Instead, Broskow teaches two identical sheets, each having a handle portion and a container receiving portion. While the sheets in the Broskow teaching are cut in overlying fashion, a carrier portion of one sheet overlies a carrier portion of the other sheet, and a handle portion of one sheet overlies a handle portion of the other sheet. Accordingly, contrary to the Examiner's statement, Broskow does not teach cutting through overlying portions of the handle sheet and the carrier sheet to form handle portion holes and rows of apertures in overlying arrangement. No where in the teaching of Broskow do container receiving apertures overlie holes in a handle sheet, and the holes of the handle portion and the apertures of the carrier portion are not of similar shape.

Contrary to the combined teachings of Slomski and Broskow, claim 1 as amended recites a method of making a container carrier in which a container holding portion is formed only in a carrier sheet and a handle portion is formed only in a handle sheet by positioning the handle sheet on at least a portion of the carrier sheet and cutting through overlying portions of the handle sheet and the carrier sheet and thereby forming holes in the handle sheet and a first row of container receiving apertures in the carrier sheet in overlying arrangement and in substantially the same configurations.

Neither Slomski, Broskow or the combination thereof teaches a process or a carrier in which a separate and distinct handle sheet and a separate and distinct carrier sheet are provided in overlying arrangement, and wherein container receiving apertures in the discrete carrier sheet and holes in the discrete handle sheet are formed one above the other and in substantially the same configurations. Slomski does not teach apertures in a carrier sheet and holes in a handle sheet that are configured anywhere similar one to the other. Broskow teaches two sheets each having a portion thereof forming a carrier portion and a second portion thereof forming a handle portion. While the sheets overly, container receiving apertures and handle portion holes do not overlie each other. Further, Broskow also fails to teach container receiving apertures in one sheet similar to holes in the handle portion of the other sheet. Neither reference alone or in combination teaches the very distinct process steps and sequences recited in the rejected claims, to provide a carrier that can be produced efficiently while using materials that can be different for both the carrier sheet and the handle sheet to optimize the performance of each.

It is further submitted that the Examiner's analyses and rejections of claims 2, 3, 4, 5, 6 and 7 are not supported by the teachings of Slomski and Broskow. For a detailed discussion of the failures of these rejections the Review Panel is referred to pages 9-10 of the response filed October 5, 2009.

CONCLUSION

The Review Panel is respectfully requested to acknowledge the inappropriateness of the rejection under 35 U.S.C. 112 and the inadequacies of the references with respect to the rejections under 35 U.S.C. 103. Accordingly, the Review panel is requested to remove the rejections and allow claims 1-7 along with already allowed claims 8-13.

The arguments above are further to the arguments previously presented in the filed responses, which are hereby incorporated by reference. For the foregoing reasons, Applicant submits that claims 1-7 are in condition for allowance, the allowance of which being hereby respectfully requested. In the event Applicants have overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby conditionally petition therefor and authorizes that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Respectfully submitted,

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